SUPREME COURT, U. S.
NOV 1967
JOHN F. DAVIS, CLERK

No. 149

IN THE

Supreme Court of the United States

October Term, 1967

WAYNE DYKE, ED MCKINNEY AND JOHN BLACKWELL,
Petitioners

v.

TAYLOR IMPLEMENT MANUFACTURING COMPANY, INC.,
Respondent

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF TENNESSEE

JOINT APPENDIX

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CONSENT DECREE

Filed and entered January 24, 1966

No. 8165 In the Chancery Court for McMinn County, Tennesse, At Athens

TAYLOR IMPLEMENT MANUFACTURING COMPANY, INC.

A Tennessee corporation having its principal office and place of business in the City of Athens, County of McMinn, State of Tennessee,

Complainant

vs.

UNITED STEELWORKERS OF AMERICA, AFL-CIO

A labor organization carrying on its activities in the State of Tennessee, JOHN BROOME, Individually and as Staff Representative of said International Union, ANDY HEATON, Individually and Employee and Agent of said International Union, WAYNE DYKE, KENNETH KYLE, JAMES (BUDDY) CRANFIELD, ED McKINNEY, JOHN SCOTT, WAYNE REESE, ALTON WATSON, JOE BRANNON, SHERMAN GREEN, BILL JACKSON, MARTIN BOWLIN, JR., Individually and as Agents of the Union, and all other members of said Union and all persons whomsoever allied and acting in concert with them for a common purpose.

Defendants

This cause came on to be heard this 24th day of January, 1966, before the Honorable G. W. Woodlee, Chancellor, upon good cause shown and upon agreement of the parties. The defendants, and each of them, are permanently enjoined from:

(a) Engaging in mass picketing and mass assemblage of pickets and/or others and having more than three (3) per-

sons within 250 feet of Complainant's property line at any one time; the said three (3) allowable persons may maintain their position at the Company's property line in the beginning of the paved portion of the access road, and all other defendants are prohibited from congregating or massing on any of the paved right-of-way but are permitted to gather at the location on which the present school but sits.

(b) From using language or gestures against any employee, customer or visitor of the Complainant, or any other person, which is calculated to have the effect of arousing fear or bodily harm or property damage or of otherwise breaching the peace;

(c) From inflicting harm or damage upon the persons or property of Complainant's employees, customers, visitors or any other persons. This includes but is not limited to the throwing of tacks or other sharp objects on the roadway or driveway;

(d) From interfering in any way with free ingress or egress to and from Complainant's property by employees, customers, visitors, or invitees of Complainant;

(e) From building and/or maintaining a fire within 250 feet of Complainant's property line, except that it is allowed to the above three (3) pickets a fire barrel which shall be set out of the roadway and so as not to interfere with the flow of traffic.

(Signed) *G. W. Woodlee, Chancellor*

PETITION FOR ATTACHMENT FOR CONTEMPT

* * *

The complainant, Taylor Implement Manufacturing Company, Inc., the original complainant herein, respectfully shows to the Court:

* * *

"On or about February 25, 1966, at approximately 11:00 p.m. while Lloyd Duckett, nonstriking employee of the complainant, was at his home located in Monroe County, Tennessee, along with four members of his family, an automobile drove to his premises from which a shot was fired into his home. Thereupon the fleeing car in question was pursued, identified, and caught. It was found that the three occupants of the car were John Blackwell and the defendants Wayne Dyke and Ed McKinney, all three of whom are striking employees of the complainant and members of the defendant Union. The said Wayne Dyke is the elected president of the local group of the defendant Union. A rifle of the type which fires a projectile of the sort found at the Duckett Home was discovered in the car at the time of the apprehension and arrest of the said three striking employees."

DECREE

* * *

The defendants, with the exception of the United Steelworkers of America, AFL-CIO, being in Court under arrest on the attachment heretofore issued against each of them, and the Court having set the hearing for the defendants, Wayne Dyke, Ed McKinney, and John Blackwell, only, for the allegations set forth in count IV of said petition, with a hearing for the remaining defendants on the remaining counts of the petition to be set at a later date.

The Court having considered the said petition, the answers of the defendants, Wayne Dyke, Ed McKinney, and John Blackwell, and having heard the oral testimony of the complainant and its witnesses in open court, and having further considered the announcement by the solicitors for the defendants that they would offer no proof, and the entire records, the Court is of the opinion that the defendants, Wayne Dyke, Ed McKinney, and John Blackwell, are in contempt of Court.

* * *

It is therefore ORDERED, ADJUDGED, and DECREED by the Court that the defendants, Wayne Dyke, Ed McKinney, and John Blackwell, and each of them be fined the sum of Fifty Dollars ($50.00) and that each of them be committed to the jail of McMinn County, Tennessee, and there to remain for a period of ten (10) days.

The defendants have twenty (20) days from the entry of this order to file a motion for a new trial.

(Signed) *G. W. Woodlee, Chancellor*

TRANSCRIPT OF CONTEMPT TRIAL

Athens, Tennessee
March 22, 1966

BE IT REMEMBERED, the above-entitled cause came on for hearing on this date before the Honorable Glenn W. Woodlee, Chancellor, when all parties announced ready for trial.

WHEREUPON, the following proceedings were had and evidence introduced, to-wit:

* * *

THE COURT: And you charge that these three men, or some one of them, fired into the home of this gentleman?

MR. AYRES: Yes sir, Your Honor, and that the car fled from Monroe County and was apprehended in McMinn County with a rifle of the type that fires a projectile of the sort found at the Duckett home was found in the car in which the three men were riding.

THE COURT: What is your defense?

MR. TAYLOR: Our defense is that we didn't do it.

THE COURT: Not guilty?

MR. TAYLOR: Not guilty.

* * *

MARVIN HAMPTON,

being first duly sworn, was examined and testified as follows:

* * *

Q. Mr. Hampton, I will take you back to the night of February 25, 1966, and ask you where you were on this night?

A. I was at Arnold Phillips' home.

Q. Where?

A. Arnold Phillips.

* * *

Q. Arnold Phillips' home. Who is Arnold Phillips, Mr. Hampton?

A. He is my father-in-law.

Q. Where does he work?

A. Taylor Implement.

Q. How far is his home located from the home of Lloyd Duckett?

A. I would say three to four hundred yards.

Q. Can you see the home of Lloyd Duckett from the Arnold Phillips' home?

A. Yes, you can.

* * *

A. At eleven o'clock I was sitting in Arnold Phillips' living room and there was a car come in sight and I sat there and watched it as it passed Arnold's Home. It was very normal and——

THE COURT: (Interposing) Very what?

A. Very normal. The car was very normal when it passed.

* * *

Q. (By Mr. Carter) What is the lighting condition there at the Arnold Phillips' home?

A. Would you repeat that?

Q. Well, what kind of lights do they have there so you can see the road, if any?

A. Well, they had two floodlights in the front yard.

Q. Could you see the road clearly from this—where you were sitting?

* * *

A. Yes sir.

Q. What color car was the car that passed?

A. It was a white top with a dark bottom.

Q. What kind of an automobile was it?

A. It was a Dodge.

Q. A Dodge automobile?

A. Yes.

Q. Could you give the approximate year of the automobile?

A. I would say it was a sixty to a sixty-one.

Q. Immediately after the automobile passed the Arnold Phillips' home would you tell the Court in your own words what happened?

A. Well, just after they passed the house I heard the motor grab several times and then just—just a second I heard guns fire.

* * *

CROSS EXAMINATION

BY MR. TAYLOR:

Q. Mr. Hampton, you didn't see these boys that night at all, did you?

A. No sir, I couldn't swear that I seen them.

Q. You can't swear that you saw these boys. As a matter of fact you can't swear where these boys were that night, can you?

A. No sir.

Q. And you can't swear as to what—whose car it was, can you?

A. No sir.

Q. As far as you know, you don't know anything at all about it, do you? Is that right? You don't know who shot in the house?

A. No sir.

* * *

WITNESS EXCUSED.

MR. LONGSHORE: Excuse me for interrupting, but this matter of a jury trial. I would like to have it put in the record that the defendants demanded a jury trial——

THE COURT: (Interposing) Let the record show that demand was made for a jury and denied.

LILLIAN HARRIS,

being first duly sworn, was examined and testified as follows:

* * *

Q. What relationship, if any, is Lloyd Duckett to you?

A: My father.

Q. Mrs. Harris, on the night of February 25, 1966, I will ask you where you were?

A. In the living room of my father's home.

Q. And in what county is that located in?

A. Monroe.

* * *

Q. Would you relate to the Court, Mrs. Harris, what happened on this occasion, if anything, and at approximately what time?

A. Around eleven o'clock why this car came up the road.

* * *

Q. Did you see the car to begin with?

A. I saw the headlights.

Q. You saw the headlights——

A. (Interposing) Yes.

Q. (Continuing) of the automobile?

A. Yes.

Q. All right, go ahead.

A. And it came on up the road to the mail boxes and it began slowing up, and then it came on up just a few more feet and there was a gun fired.

Q. Was that from the automobile toward the home where you were in?

A. Yes. It was fired from the automobile.

Q. Where were you standing at that time?

A. In the living room.

Q. Standing in the living room. Could you see out the door?

A. Yes, I could.

Q. Did you see the automobile?

A. Yes.

Q. What is the lighting condition, if any, at the home where you live?

A. It's very good. You can tell—You can distinguish light from dark.

Q. Well, do you have floodlights there or anything?

A. Yes.

* * *

Q. Do you recall the general character of the car, the color or anything like that?

A. No, I couldn't. I was too frightened.

Q. Did you see the automobile leave that area?

A. Yes, I did.

Q. What, if anything, happened to that automobile?

A. Would you repeat that?

Q. What, if anything—Were shots fired? What, if anything, happened as the automobile was going on up the hill?

A. Well, there was a shot fired into it.

Q. Did you see—How do you know there was a shot fired into it, I will ask you?

A. I saw the fire fly off of it.

Q. Off the car?

A. Off the back of the car.

Q. All right. Was the automobile going away from your home at the time?

A. Yes.

* * *

Q. . . . . Now, of course, you don't know who—You don't know whose car this was?

A. Just all I've heard.

Q. And you don't know these boys? Didn't see them up there that night, did you?

A. No sir.

Q. And is that about all you know about it? What you've stated here is all you know about it?

* * *

A. Yes.

THE COURT: Young lady, you said there was a shot fired into this car that was moving along the road there. Do you know who shot that—who fired that shot?

THE WITNESS: Yes.

THE COURT: Who was it?

THE WITNESS: My brother-in-law.

THE COURT: Where was he?

THE WITNESS: He was in the yard—at my father's home.

* * *

DALE HARRIS

being first duly sworn, was examined and testified as follows:

* * *

Q. Who is your father-in-law?

A. Lloyd Duckett.

Q. Where does Mr. Duckett work?

A. Taylor Implement Company.

Q. On the night of February 25, 1966, Mr. Harris, where were you?

A. I was at my father-in-law's in the living room.

* * *

Q. All right. When you went outside did you see an automobile approaching?

A. Yes sir, I did.

Q. Was it coming from—What direction?

A. It was coming up the road I would say it was east. I mean west East——

Q. (Interposing) Well, was it coming from the direction of Arnold Phillips' home?

A. Yes Arnold Phillips.

Q. Was it coming uphill?

A. Uphill; yes.

Q. And what, if anything did the occupants of that automobile do when it got to the place or point of Lloyd Duckett's home?

A. Well, when it got to his mail boxes it began to slow down a little bit and got on up in front of his house which was only about twenty feet—twenty-five feet—why it got slower all the time it was coming up through there and then they was a shot fired and we—I heard it hit the house.

Q. All right. Could you see the automobile at that time?

A. Yes sir, I could.

Q. Do you know what kind of automobile that automobile was?

A. It was a '60 or '61 Dodge Pioneer.

Q. Are you familiar with cars?

A. Yes sir.

Q. And is that sort of a hobby of yours of some sort?

A. I've just always been able to tell most cars.

Q. And you could see this automobile on this night?

A. Yes sir, I could.

Q. Have you seen that automobile since that time?

A. Yes sir.

Q. Where did you see that automobile?

A. We was brought to McMinn County Jail to identify it that night.

Q. And who brought you down here?

A. Sheriff Kirkpatrick.

Q. And did you identify it at that time?

MR. TAYLOR: We except to the identification.

Q. (By Mr. Carter) Well, did you see the same car—

THE COURT: (Interposing) He asked if he identified it.

A. (By the witness) Yes. It was the same car.

Q. What, if anything, after you went out in the yard, what, if anything, did you or your brother-in-law do? What did you do concerning this automobile after it shot?

A. Immediately after it shot my brother-in-law was, he was in front of me and he just—He was on his knees and he fired a shot within a couple or three seconds at the car and I seen the fire fly from the trunk lit.

Q. From the trunk of the car?

A. Somewhere around the trunk lid. It was in the back of the car.

Q. Could you tell how many people were in that car?

A. No sir. They was quite a few people. I couldn't tell.

Q. Now then, immediately thereafter what did you do concerning the notification of authorities, if anything?

A. We went to a neighbor's home half a mile, could be three-quarters of a mile, and called the Monroe County Sheriff's Department.

* * *

Q. And, of course, you don't know who they were?

A. No, I never seen them before.

Q. Never seen them before?
A. No.
Q. That's all you know about it?
A. Yes sir.

ROBERT WAYNE ELLIS,

being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CARTER:

Q. What is your name?
A. Robert Wayne Ellis.
Q. Speak up, Mr. Ellis, so the attorneys for the defendants in this case can hear you, also the Court. Where do you work?

* * *

A. I am a mechanic at Madisonville Motors.
Q. Are you related in any way to Mr. Lloyd Duckett?
A. Yes. He's my father-in-law.
Q. You married his daughter?
A. Yes.
Q. I will ask you to relate to the Court, Mr. Ellis, where you were on the night of February 25, 1966?
A. I was at my father-in-law's house.
Q. At approximately eleven o'clock who was still awake?
A. It was me, my sister-in-law, and her husband.
Q. And who is that?
A. Dale Harris and Lillian Harris.
Q. Lillian Harris?
A. Yes.
Q. Would you relate to the Court just what happened on that evening—at that time?
A. Well, about eleven my sister in law seen the lights on the car coming, so me and Mr. Harris went outside, and

as the car approached it just slowed up and shot fired and we returned fire.

Q. I will ask you what, if anything, happened earlier in the evening on this same night?

A. Yes. About eight o'clock they was a '57 Ford, black——

Q. (Interposing) Did you see this car?

A. Yes.

Q. All right. Go ahead.

A. It pulled up just about exactly in the same spot where the——

MR. TAYLOR: (Interposing) We except to something about some other car at some other time.

THE COURT: Overule.

Q. (By Mr. Carter) Go ahead.

A. It stopped at about exactly—the exact spot where the shot was fired from the other automobile. It set there about a minute or a minute and a half and backed up and went back, back down the road toward Phillips's.

Q. Did this arouse your suspicion or anything?

MR. TAYLOR: We except to arousing his suspicion.

THE COURT: Well, yes, I think——

MR. TAYLOR: (Interposing) I withdraw that.

THE COURT: It wouldn't help us too much.

Q. (By Mr. Carter) In any event, when you returned the fire, Mr. Ellis, did you hit the automobile that speeded away?

A. Yes sir.

Q. Where, if you have any idea, did you hit this automobile?

A. I knowed I hit it in the back. In the back of the car.

Q. How do you know you did? How do you know you hit it?

A. Well, that's where I aimed.

Q. Did you see any fire or anything like that fly from the car?

A. No sir.

Q. Did you hit the back of it in a high place or a low place——

MR. TAYLOR: (Interposing) Let him tell where he hit it.

THE COURT: He is asking him.

MR. CARTER: Just give me time. Give me time to ask the question.

A. (By the witness) Well, all I shot for was the back of the car.

Q. Did you see that car at a later time? Where did you see the car?

MR. LONGSHORE: We object to that. Well, I withdraw my objection.

Q. (By Mr. Carter) Where did you see the car?

A. Seen it at the Jail.

Q. What Jail was that?

A. Athens.

THE COURT: Let's back up a minute. What kind of a car was it? If you know?

THE WITNESS: Well, I knew it was a '60 or '61 Dodge and I knew it was a light colored top.

THE COURT: You saw it well enough——

THE WITNESS: (Interposing) Yes sir.

THE COURT: (Continuing) to know it was a Dodge automobile?

THE WITNESS: Yes sir. I've worked on enough of them.

THE COURT: Are you a mechanic?

THE WITNESS: Yes sir.

THE COURT: Garage man or automobile mechanic?

THE WITNESS: Automobile mechanic.

THE COURT: And it was either a '60 or '61 Dodge?

THE WITNESS: Yes sir.

THE COURT: And you're positive you could recognize that car as it drove up and approached your father-in-law's house?

THE WITNESS: Yes sir.

THE COURT: Did you fire more than one shot?

THE WITNESS: Yes sir. Approximately about three. Three or four. I'm not sure.

THE COURT: Could you tell whether you hit the car?

THE WITNESS: Well I knew I hit it the first shot.

THE COURT: Well, how did you know it?

THE WITNESS: I'm just not that bad of a shot.

THE COURT: Anything further?

Q. (By Mr. Carter) Who was with you on this occasion when the shots were fired?

A. Dale Harris.

Q. Dale Harris. And you— Did you come to McMinn County Jail?

A. Yes sir.

Q. And did you see the automobile that was there that night? Did you inspect the automobile in any way?

A. Yes.

Q. What did you find there——

A. (Interposing) Well, I found a bullet hole.

THE COURT: First of all, was it the same car?

THE WITNESS: Yes. I would say it was.

THE COURT: What did you find?

THE WITNESS: Well, first, of course, I found the bullet hole.

Q. (My Mr. Carter) Where was the bullet hole, Mr. Ellis?

A. In the back of the trunk lid.

Q. Who did you come to the McMinn County Jail with?

A. Howard Kirkpatrick, Sheriff of Monroe County.

Q. And did you return to Monroe County with him?

A. Yes sir.

Q. What, if anything, happened in the Monroe County Jail early the next morning, in the morning hours, that you remember, if anything, Mr. Ellis?

A. Well, I heard some talk that——

Q. (Interposing) Who was doing the talking?

A. McKinley. McKinley or McKinney.

Q. Do you recognize him?

A. Yes sir.

Q. Which one is he?

A. That one (indicating). The one on this end.

Q. All right. What, if anything, did he say there in your presence?

MR. LONGSHORE: We object to that, Your Honor, it is outside the allegations of the petition.

THE COURT: I overrule.

A. (Witness continuing) Heard him talking to a boy. He was the guy in the wrecker that pulled the car to Monroe County, the boy was.

Q. What did he say?

A. I heard him say we had our backs to him and heard him say he was fixing to leave that car.

Q. He said he was fixing to leave the car?

A. Yes sir.

MR. CARTER: I think you may ask.

THE COURT: Now you say that Ed McKinney said what?

THE WITNESS: Said that he was fixing to leave the car. The way I understood it was that he was just scared to death.

MR. TAYLOR: We except to that.

THE COURT: Well, yes. I sustain. You may have understood but I was just trying to get exactly what he heard him say.

THE WITNESS: I heard him say that he was fixing to leave the car. I was not the only one that heard it.

Q. (By Mr. Carter) I ask you, Mr. Ellis, if you can identify that photograph?

A. Yes sir.

Q. What is that photograph? What does it represent?

A. That's the car that I fired into the back of.

Q. Is there a bullet hole or anything like that which is in the automobile?

A. Yes sir.

Q. Will you introduce that as an exhibit to your testimony?

A. Yes sir.

THE COURT: Let the counsel see the exhibit. (Passing photograph to counsel for defendants.) Any objections to this exhibit?

MR. TAYLOR: No sir.

THE COURT: Let the reporter identify it.

(Thereupon said photograph was introduced in evidence and marked Exhibit 1 to the direct examination of Robert Wayne Ellis.)

Q. (By Mr. Carter) Did you hear anything this same night strike the home of Mr. Duckett?

A. Pardon?

Q. Did you hear the shots strike or anything?

A. Yes sir.

* * *

Q. (By Mr. Taylor) You can't say, in other words, that you are absolutely positive this is the car——

A. (Interposing) Well, it was one just like it.

Q. Well, it was one just like it. But there could—— Could have been another one because they make several '60 and '61 Dodges, don't they?

A. Right.

Q. And so you couldn't positively swear that was the same car to your own knowledge?

A. I couldn't swear it was the car. Of course——

THE COURT: You may be excused.

MR. TAYLOR: Wait just a minute.

Q. (By Mr. Taylor) Now something else, don't you know that hole could have been in there for a long time? It could have been, couldn't it? You couldn't tell whether it had or not? Could you?

A. Well——

Q. (Interposing) That's true, isn't it? You couldn't tell for sure, could you? You couldn't swear positively that you made that hole, could you?

A. No sir.

Q. But you are pretty well satisfied you put it there because you were shooting at it and you're a good marksman, is that right?

A. Right.

Q. And you fired three shots at it——

A. (Interposing) Right.

Q. Trying to hit it?

A. No.

Q. Well, why didn't you try to hit it with the other two shots?

A. All I wanted to do was mark it. I did not want to hit no one.

* * *

Q. Now you don't— You didn't see these boys in Monroe County that night, did you?

A. No.

Q. And you don't know who was in that car——

A. (Interposing) No sir.

Q. (Continuing) do you?

A. No.

* * *

HOWARD KIRKPATRICK,

being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CARTER:

Q. For the record, what is your name, sir?

A. Howard Kirkpatrick.

Q. What office, if any, do you hold in Monroe County?

A. Sheriff.

Q. How long have you been Sheriff there, Mr. Kirkpatrick?

A. Since '60. Five years and a half.

Q. All right, on the night of February 25, 1966, Sheriff, what—at approximately eleven o'clock what, if anything, were you doing?

A. I was at the jail.

Q. When was the first notification of any trouble that you received involving a shooting at the home of Lloyd Duckett?

A. We got a telephone call.

Q. What did you do?

A. I got in my car and started that way in a very few minutes. The first time we got a description of the car. I mean they gave us the description of the car.

Q. Well, did you have your officers put a description out on the radio?

A. Yes sir, I did.

Q. And when you arrived at the home of Lloyd Duckett what, if anything, did you do?

A. Well, before I— Well, I got some of the people and we came on over to Athens.

Q. Before you arrived there, what, if anything, did you do?

A. They notified me by radio that they had a——

MR. TAYLOR: (Interposing) We except to that, Your Honor?

THE COURT: Well, what information did you have?

THE WITNESS: How shall I answer? Just——

THE COURT: (Interposing) Well, were you alerted in any way——

THE WITNESS: (Interposing) Yes sir.

THE COURT: (Continuing) about any particular car?

THE WITNESS: Yes sir. I was alerted that the car had been stopped that fit the description of the car that we put out—in McMinn County.

THE COURT: Did you have information as to who stopped it or who had the car?

THE SHERIFF: Yes sir.

Q. (By Mr. Carter) Immediately thereafter where did you go?

A. I went on to the Duckett home.

Q. All right, and what, if anything, did you do when you arrived at the Duckett home?

A. Well, I inspected around the Duckett house. Couldn't find anything and we got the people up there and came over to Athens with them.

Q. All right, sir, when you arrived at McMinn County Jail what, if anything, did you find?

A. Of course, they was several people there.

Q. Well, did you see an automobile of any sort there?

A. Yes sir.

Q. Where did you obtain that weapon?

A. It was turned over to me by the McMinn County Sheriff's Department.

Q. Was there any kind of pellets or anything like that also turned over to you?

A. Yes sir. I believe it's two boxes.

Q. All right, sir, did the Ducketts or any person in their family turn over a bullet to you which was found——

MR. TAYLOR: Object to what was found. Just tell——

THE COURT: (Interposing) Yes.

Q. (By Mr. Carter) What was turned over to you by the Duckett family, if anything?

A. A pellet.

Q. Did you compare that pellet with the pellet which was given to you by the McMinn County Sheriff's Department?

A. I wouldn't be qualified to compare——

Q. (Interposing) I'm not asking if you're an expert, Sheriff. All I'm doing is asking you if you did compare them by looking at them.

MR. TAYLOR: We object to that, Your Honor.

THE COURT: He said he wasn't qualified but he can tell if he made a comparison.

A. (By the witness) Yes sir, I did.

Q. (By Mr. Carter) Did they appear to be the same as——

MR. TAYLOR: (Interposing) Except to appearing.

THE COURT: I overrule.

A. (By the witness) Yes sir. They seemed to be the same type.

THE COURT: Now the weapon that was turned over to you, who turned it over to you?

THE WITNESS: The Sheriff over at McMinn.

THE COURT: What kind of a weapon was it?

THE WITNESS: Well, I never did see one like it before. They call it an air gun or a pellet gun. It would make you think of a 22 rifle just to look at it but not as long a barrel.

THE COURT: You've never seen one like it?

THE WITNESS: I don't believe I had; no sir.

Q. (By Mr. Carter) Had you ever seen any pellet like this before, Sheriff?

A. No, sir, I don't believe I've ever seen those pellet guns with those pellets before.

Q. All right. Did you establish the ownership of the automobile in your investigation?

A. Yes sir, I——

Q. (Interposing) Who owned the automobile?

A. I would have to check the radio log on that. I didn't refresh up but I am pretty sure that fifty-two— May I refer to this, Your Honor?

THE COURT: Yes.

A. (Witness continuing) This R 23-62——

MR. TAYLOR: (Interposing) That would be hearsay as to who the number was registered to.

THE COURT: Did you check to determine who owned the car?

THE WITNESS: By the registration.

THE COURT: Well what did it show?

THE WITNESS: It was to a Mr. McKinney. I don't remember the full name——

MR. TAYLOR: (Interposing) We except to that, Your Honor.

THE COURT: Well, do you want——

MR. CARTER: (Interposing) Do you want us to bring the County Court Clerk here? Bring the clerk and go through that formality?

MR. TAYLOR: No.

THE WITNESS: Your Honor, I'm talking about the license tag.

THE COURT: That's the way I understood you. They're excepting to it and technically the exceptance is good. If you want the County Court Clerk here——

MR. CARTER: (Interposing) He's not insisting on it, Your Honor.

THE COURT: All right. Go ahead.

MR. CARTER: That's all.

* * *

THE COURT: Do you have the gun with you?

THE WITNESS: No sir. It's locked up at Madisonville.

THE COURT: Madisonville?

THE WITNESS: Yes sir.

MR. TAYLOR: That's all. Come down.

THE COURT: Are you offering this gun and ammunition in evidence?

MR. CARTER: I would like to but he didn't bring it——

THE COURT: Let it be treated as filed and withdrawn.

* * *

LOYD POWERS,

being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CARTER:

Q. What is your name, for the record?

A. Loyd Powers.

Q. What do you do, Mr. Powers?

A. Deputy Sheriff.

Q. How long have you been a Deputy Sheriff?

A. Three and a half years.

MR. TAYLOR: We will admit he is a deputy sheriff with the present Sheriff and a good sheriff and deputy.

THE COURT: All right.

Q. (By Mr. Carter) Mr. Powers, what were you doing on the night of February 25, 1966?

A. I was a deputy sheriff out patrolling in a patrol car.

Q. And where were you?

A. Out here on the— Well, just around here and yonder but approximately the time that—around eleven o'clock I was in front of Frederick's Drive-In on the Old Etowah Road.

Q. All right. On this occasion were you by yourself?

A. I was. Yes sir.

Q. What, if anything happened on this night, Mr. Powers, concerning John Blackwell, Ed McKinney and Wayne Dyke that you can relate to the Court?

A. I heard a call from the Sheriff of Monroe County over this two-way radio giving to ours—our station here—that they had had a shooting into a house in Monroe County——

MR. TAYLOR: Object to he just heard a call— Had a call——

THE COURT: (Interposing) All right. You were alerted about a shooting, then what happened?

THE WITNESS: Oh, to be on a lookout for——

Q. (By Mr. Carter) Did you get a description of the automobile?

MR. TAYLOR: That would be hearsay.

THE COURT: Well, overrule.

Q. (By Mr. Carter) Did you get a description of the automobile?

A. Not exactly. All I got is just that it would be an old make model car. Kinda old make model car.

Q. Go ahead.

A. So I went from there towards Englewood. Drove towards Englewood. Just this side of Englewood City Limits I met three cars. The front car I looked at it and seen it was kinda an old model car. As the car went by me I looked back and it had the right-hand tail light out. These other two cars were running up pretty close to it. I go on up here and turn around, start back after this car to see if this was the car they were looking for. It had done topped over the hill at this time; all three cars had from where I was. I come on over the hill and I spotted the car again by the right tail light being out on it. I passed these other two cars behind it within about a mile's time from where I met them at, where I passed these other two cars. This car here, I never did pass this car and never did catch up with it. It was running at a high speed, high rate of speed. I was running seventy to eighty miles an hour. I chased the car on for a couple of miles. It was still ahead of me. I called into the City Police Department that they had a car out in the "Three-Point" area—to be out there on this car—that I was after a car that I wanted to check out——

MR. TAYLOR: We object to this——

THE COURT: (Interposing) Let the record show that it is overruled. Go ahead.

Q. (By Mr. Carter) Go ahead.

A. And they advised me that they did have a car in that vicinity; that they would be out there waiting for this car. I come on in. I could just stay in sight of this car's tail lights—light—curve just above it is where we call Three-Point Service Station on Englewood Road and I come around this curve and these boys was pulling out behind this car—police car—with the red light on. I come on and by the time they got the car stopped I was behind their car at that time.

Q. Who got out of that automobile, Mr. Powers?

A. What's that?

Q. If you know. Who got out of that automobile?

A. Ed McKinney was sitting on the driver's side. He was driving the car. Took him out. Hadn't nobdy got out of the car when I got there.

Q. Who was in the car, then?

A. And Wayne Dyke was sitting on the right-hand side on the front seat and John Blackwell was sitting in the back seat of the car.

Q. What, if anything, did you find in that car?

A. At that time we talked to the boys——

Q. (Interposing) What did they say, if anything?

A. I don't remember what they said but we talked to them there—in conference there—and we discovered a bullet hole in the back of this car.

Q. What did they say about that, if anything?

A. They made a remark that it had been in there a long time.

Q. And who said that?

A. Ed McKinney, I believe it was.

Q. All right. What did you find later in the car, if anything?

A. At that time we seen the bullet hole was just a fresh hole. Been a fresh hole, see. Wasn't even no rust spot or anything. Fresh hole through the body of the car, and——

Q. (Interposing) The first hole, or did you say a fresh hole, or what?

A. It was a fresh hole. Wasn't no rust spot or anything on the hole, you see. Where the bullet went through the hole in the back of the car they wasn't no rust spot or anything on it.

Q. All right. Go ahead.

A. I went back to my car at that time, picked up the two-way radio, advised Sheriff Kilpatrick that we thought we had the right car and to come on it this County——

Q. (Interposing) Don't——

MR. TAYLOR: We object——

Q. (Mr. Carter, continuing) Don't tell about that.

THE COURT: Yes.

Q. (By Mr. Carter) Don't tell about that. Just tell what you did after you picked them up. What did you do after you talked to the Sheriff.

A. We— At that time they advised the boys they was going to take them on to the jail.

Q. You told——

A. (Interposing) McKinney, Dyke and Blackwell.

Q. Blackwell.

A. That we was going to take them on to the jail.

Q. All right.

A. We took them on to the jail; advised McKinney, after we took him into the jail he was under arrest for reckless driving.

Q. All right.

A. We set them on the bench there in the jail. Set them on the bench. Told them to set there on the bench and we went on back out at that time and searched the car. On the right-hand side of the front seat I taken a gun from under the front seat; stuck back under the front seat.

MR. TAYLOR: We object to that.

THE COURT: I overrule.

MR. TAYLOR: Note our exception.

Q. (By Mr. Carter) Go ahead.

A. And——

THE COURT: (Interposing) You might be in good shape in a Criminal Court, but this is not Criminal Court, Mr. Taylor.

Q. (By Mr. Carter) Go ahead, Mr. Powers.

A. I also found some ammunition in the seat where Ed McKinney was sitting for this gun.

* * *

Q. All right. Did you identify this car by the license number or anything like that?

A. It had a license number R23-62 on the back of the car at the time that we brought it into the jail and it also had another tag tied under the 23-62.

THE COURT: Did you make this picture?

THE WITNESS: That's the same car.

THE COURT: Did you make this picture? Photograph?

THE WITNESS: That's the same car.

THE COURT: I say did you make this picture?

THE WITNESS: No sir.

THE COURT: Have you seen it before?

THE WITNESS: No sir.

THE COURT: Well, can you tell us by looking at this whether that is the same car you——

THE WITNESS: (Interposing) Yes sir, it's the same——

THE COURT: (Continuing) searched that night?

THE WITNESS: Yes sir. This is the same tag and same license on the outside and the same Michigan tag on the inside and also the same hole right here in the trunk, in the back of the car, right here on that side.

THE COURT: Go ahead, Mr. Carter.

Q. (By Mr. Carter) Did you have your siren on when you were chasing these people? Was your siren on?

A. Allen, I did part of the time and part of the time I didn't have, see.

Q. What about your red light, if any?

A. I didn't have any red light on at that time?

Q. How far behind them were you when you were giving chase? Just your best estimate?

A. As far back as the ball park there anyhow. As far as from here over to the ball park there. I never did get no closer than that to them until I got them stopped, see.

THE COURT: For the record, how far is that in feet? Your best estimate?

THE WITNESS: I would say four or five hundred feet. Four or five hundred feet.

MR. CARTER: I think you may ask him, Mr. Taylor.

* * *

Q. . . . Of course, you don't know what happened in Monroe County, do you?

A. No sir.

Q. And you discovered this rifle in the car a long time after you arrested them out here at the Englewood intersection?

A. I taken it out of the car after we got to the jail.

Q. That's right.

A. After we got to the jail.

Q. And, of course, that was after they had been arrested and then you went out and found the gun and the ammunition?

A. That's right.

MR. TAYLOR: That's all. Of course, we are excepting to all this.

THE COURT: Yes. Let the record show the exception made and overruled.

* * *

CALVIN CANNON,

being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CARTER:

Q. For the record, what is your name, please sir?

A. Calvin Cannon.

Q. And what official capacity do you hold in McMinn County?

A. Sheriff.

Q. On the night of February 25, 1966, or in the early morning hours of February 26, 1966, where were you Sheriff?

A. I was at the McMinn County jail.

Q. Of course, you don't know anything other than what you heard about what happened in Monroe County?

A. That's correct.

Q. Did you on this night or in the early morning hours ever see the three defendants?

A. Yes sir. Approximately eleven-thirty the first time.

Q. All right, did you see the automobile in which they were riding?

A. Yes sir, I did.

Q. Did you make an investigation of the automobile?

A. I went out and looked at the automobile and checked it and found where that a bullet or—had entered into the trunk of the automobile and picked up the fragments of the bullet. It hit the frame after it went through and also a tool box and, of course, there was the fresh lead, real bright——

MR. TAYLOR: I object to that. He didn't have a search warrant to go in the back of the car.

THE COURT: I overrule.

MR. CARTER: I think you may ask him.

CROSS EXAMINATION

BY MR. TAYLOR:

Q. Sheriff, that's all you know about it, isn't it?

A. That's all I know. Just what happened——

MR. TAYLOR: (Interposing) That's all. Come down.

THE COURT: What kind of a car was it, Sheriff?

THE WITNESS: This was a two-tone 1960 Dodge.

THE COURT: Look at this picture. Is this a picture of the car you inspected on that evening?

THE WITNESS: Yes sir. Same tag number and the bullet hole, of course, in this location. Also I remember specifically this sticker on the back, "Repeal 14B".

THE COURT: Very well.

RE-DIRECT EXAMINATION

BY MR. CARTER:

Q. Did you see the bullet hole there yourself?

A. Yes sir.

Q. Well, could you determine whether or not it was a new hole or an old one?

A. Well, I couldn't say exactly how new but it was a—it was of a recent time because there was no rust or anything. It was a bright hole and the fragments of the lead from the bullet which had penetrated was there and it was real bright, just like it had been fresh cut.

RE-CROSS EXAMINATION

BY MR. TAYLOR:

Q. Of course, this could have been done the day before, two days before or the week before or a month before, couldn't it?

A. I'm not an expert on that. In my opinion, no.

Q. In your opinion, no, but you're not an expert? In other words it couldn't have been done the day before? It had to have been done that night?

A. In my opinion.

* * *

HERSHEL JACK,

being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CARTER:

Q. What is your name, please sir?

A. Hershel Jack.

Q. And where do you work, Mister——

A. (Interposing) Athens Police Department.

* * *

Q. Did you see the defendant John Blackwell, Wayne Dyke and Ed McKinney on this night?

A. I did.

Q. Well, will you tell the Court about this?

A. Well——

Q. The first time you saw them, when was it?

A. When Loyd Powers called us to block the intersection——

Q. (Interposing) And where did you block the intersection?

A. Three-Point, ah, we pulled in behind them at Three-Point Service Station and stopped them at the New Etowah Road at that "Yield Right of Way" sign.

Q. And is that in the City of Athens?

A. Yes.

Q. Who was driving? First of all, what kind of an automobile did you stop?

A. It was a Dodge.

Q. And who was in this Dodge that you stopped?

A. Ed McKinney, Dykes—Wayne Dykes—ah——

Q. (Interposing) Well, do you recognize them here?

A. Yes.

Q. Those three gentlemen there?

A. Yes.

Q. Who was driving the automobile?

A. Ed McKinney.

Q. Where was Mr. Dyke sitting?

A. He was sitting on the right-hand side.

Q. Where was Mr. Blackwell sitting?

A. He was sitting in the back seat.

Q. What, if anything, did they say to you there?

A. They didn't say anything. I told them that we had a call; that this car was involved in a shooting or something or that we had a complaint on something that met that description and we were holding them until the officer got there that was running them—or was after them. They didn't make any statement.

* * *

THE COURT:

* * *

Actually this proceeding is of the nature of quasi criminal. It's neither civil. It's neither criminal but it is of the nature of quasi criminal

* * *

COMPLAINANT RESTS

THE COURT: Defendants offering any proof?

MR. TAYLOR: Give us five minutes, Your Honor.

THE COURT: We'll take a ten-minute recess.

(thereupon a recess was had)

THE COURT: Mr. Taylor, any proof?

MR. TAYLOR: Not at this stage,

* * *

MR. CARTER: In this case we think it without question that the proof is here and we admit, of course, that it is circumstantial evidence, but we think this is certainly a strong case. We have the proof here of this automobile, which has been identified, going past the Duckett home, the occupants of which fired a shot toward the Duckett home, thereupon a shot was returned in answer; striking this automobile.

We have the proof of two witnesses that saw the flash come from the rear of the car. They indicated that that is where the bullet hit the automobile. The automobile—Of course, a call was sent in to the Monroe County Sheriff's Department, the description of the automobile was put out on the wire, and this automobile which contained three McMinn County men was apprehended in the City of Athens some time later, and the automobile had in it a bullet hole which was fresh. The fragments of the lead was found inside the trunk. In this automobile was found Ed McKinney—these defendants—Ed McKinney, John Blackwell and Wayne Dyke.

Now the question is: What was that gun doing in the automobile? We think the proof here, without question is substantial. What was the gun doing in the automobile? There was a gun there, and the Sheriff of Monroe County said that he compared the pellet which was found at the Duckett home with the pellet which was found in the automobile. He said that he had never seen a gun like this before. He said he had never seen pellets like this before and he said they were similar; that they were comparable. That's what he said.

We have proof here that certainly these men had a motive to go up there and if they had no motive they wouldn't have been in that part of the country.

We have proof here by this photograph—the ownership of the car—the car was owned by Ed McKinney. The description of the car fits and we think we have proved a circumstantial case here which is certainly strong, and Mr. Taylor's motion should be overruled and denied.

* * *

MR. TAYLOR: That's right. And since it has been mentioned here, these boys are on strike and so forth—They're poor fellows, poor lawyer, and I don't think the punishment should be severe. I don't think there should be a fine, if the Court should see fit, for them to have the ex-

pense of making bond, and I think that the Court, in view of the case— It's pretty flimsy circumstantial, and the elements, the elements of a criminal offense, the motive. The motive. They haven't proven any desire on these boys' part to intimidate that man or commit the offense of shooting at him. And something else, this thing they picked up there, you know, looked like a bullet, you know, and this, one of these men fired a .22 rifle and I was certainly glad to learn that these men were only charged with using an air rifle, and they didn't see fit to offer it, and I submit to the Court —and I think these boys should be given the benefit of the doubt.

* * *

THE COURT: Of course, this case is premised entirely upon circumstantial evidence. That's all we have. However, when circumstantial evidence is such that it rules out every other reasonable hypothesis, then there isn't any case as strong, even in criminal law, and this is quasi criminal The only question here is whether or not these gentlemen violated this Court's order, and if they did they should be punished, and if not, they should be acquitted.

It is the duty of this Court to enforce its orders. If it doesn't do that it might as well close the doors, lock them or leave them unlocked and throw the keys away. I have no trouble at all with the proof which I have heard and I have weighed it in its severest form, that the charges made must be proven beyond a reasonable doubt.

I find these three defendants guilty of the act charged. I am going to fine them $50.00 each, give them ten days in jail, each.

ASSIGNMENT OF ERRORS FOR THE APPELLANT

* * *

SPECIFICATIONS OF ERROR

1. The Court erred in denying the defendants a trial by jury. See Motion for New Trial, ground no. 1 (Tr. 84) The defendants' answer demanded a trial by jury. (Tr. 74) The Court noted and denied the demand for jury trial. (Tr. 99) The defendants had a right to trial by jury by reason of Title 40, §2504, Code of Tennessee (1956); Art. 1, §6 of the Constitution of the State of Tennessee; and the 7th Amendment to the Constitution of the United States.

* * *

3. The Court erred in admitting evidence of an air-rifle found in the automobile without a search warrant. See Motion for New Trial, ground no. 4. Sheriff Powers searched the car in question without a search warrant and testified he found a gun.

> "A. We set them on the bench there in jail. Set them on the bench. Told them to set there on the bench and we went on back out at that time and searched the car. On the right-hand side of the front seat I taken a gun from under the front seat; stuck back under the front seat.
>
> "MR. TAYLOR: We object to that.
>
> "THE COURT: I overrule.
>
> "MR. TAYLOR: Note our exception.
>
> "Q. (By Mr. Carter) Go ahead.
>
> "A. And——
>
> "THE COURT: (Interposing) You might be in good shape in a Criminal Court, but this is not Criminal Court, Mr. Taylor.
>
> "Q. (By Mr. Carter) Go ahead, Mr. Powers.
>
> "A. I also found some ammunition in the seat where

Ed McKinney was sitting for this gun." (Tr. 142-143)

Over objection the Court allowed the evidence noting perceptively that "you might be in good shape in a Criminal Court, but this is not a Criminal Court, Mr. Taylor." (Tr. 143) The defendants were entitled to Constitutional protection (both State and Federal) from unreasonable search and seizure which was denied them by reason of the Court's assumption of criminal jurisdiction.

* * *

PROPOSITIONS OF LAW

PROPOSITION OF LAW I.

In cases of contempt of court committed outside the presence of the court there is a constitutional and statutory right to trial by jury.

Tennessee Code Ann., ch. 21, §1011.

Tennessee Constitution, Art. 1, §6.

U. S. Constitution, Amendment VI.

U. S. Constitution, Amendment XIV.

* * *

PROPOSITION OF LAW III.

Evidence obtained by means of an illegal search and seizure is inadmissible in state court proceedings.

Ellis v. *State,* 364 S. W. 2d 925 (1963)

Mapp v. *Ohio,* 367 U. S. 643 (1961)

Tennessee Constitution, Art. I, §7.

U. S. Constitution, Amendment IV.

U.S. Constitution, Amendment XIV.

OPINION (TENNESSEE SUPREME COURT)

This appeal comes from the Chancery Court of McMinn County, Tennessee. In that court, Wayne Dyke, Ed McKinney and John Blackwell were found guilty of criminal contempt and given the maximum sentence under T.C.A. §23-903 of ten days in jail, plus a $50.00 fine.

This prosecution for criminal contempt arose out of an alleged violation by the three previously named persons of an injunction issued by the McMinn County Chancery Court. That injunction, arising out of a labor controversy, in pertinent part reads as follows:

> "(c) From inflicting harm or damage upon the persons or property of Complainant's employees, customers, visitors or any other persons. This includes but is not limited to the throwing of tacks or other sharp objects on the roadway or driveway;"

It was alleged that the three defendants in the contempt proceeding had fired shots at or into the home of one Lloyd Duckett, a nonstriking employee of the appellee. Evidence presented at the contempt proceeding supports this accusation.

The appellants have filed the following assignments of error in this Court:

> "1. The Court erred in denying the defendants a trial by jury. See Motion for New Trial, ground No. 2. (Tr. 84) The defendants' answer demanded a trial by jury. (Tr. 74) The court noted and denied the demand for jury trial. (Tr. 99) The defendants had a right to trial by jury by reason of Title 40, §2504, Code of Tennessee (1956); Art. 1, §6 of the Constitution of the State of Tennessee; and the 7th Amendment to the Constitution of the United States.
>
> "2. The offense charged against the defendants was a crime and a felony under the laws of Tennessee and the Chancery Court is without jurisdiction to enjoin

violation of the criminal laws of the State of Tennessee. Se Motion for New Trial, grounds No. 3, 5, and 8. (Tr. 84-85) The facts made the basis of the charge of contempt, assuming arguendo they are true, are also violative of the Criminal Code of Tennessee and are punishable thereunder. Thus, the defendants could well have been charged with violation of, for example, Article 39, §4901, Article 39, §603, Article 39, §1101, or Article 39, §4501, of the Code of the State of Tennessee. The Chancery Courts do not exist to enforce the criminal code. The defendants were tried in a summary fashion without the Constitutional guarantees otherwise theirs. The Constitution of the State of Tennessee shows great concern for the rights of the accused. From arrest to trial to appeal, the defendant accused of a crime is protected from abuse by the State. These defendants are entitled as a matter of right to that protection.

"3. The Court erred in admitting evidence of an air-rifle found in the automobile without a search warrant. See Motion for New Trial, ground no. 4. Sheriff Powers searched the car in question without a search warrant and testified he found a gun.

" 'A. We set them on the bench there in jail. Set them on the bench. Told them to set there on the bench and we went on back out at that time and searched the car. On the right-hand side of the front seat I taken a gun from under the front seat; stuck back under the front seat.

" 'MR. TAYLOR: We object to that.

" 'THE COURT: I overrule.

" 'MR. TAYLOR: Note our exception.

" 'Q. (By Mr. Carter) Go ahead.

" 'A. And——

" 'THE COURT: (Interposing) You might be in

good shape in a Criminal Court, but this is not Criminal Court, Mr. Taylor.

" 'Q. (By Mr. Carter) Go ahead, Mr. Powers.

" 'A. I also found some ammunition in the seat where Ed McKinney was sitting for this gun.' (Tr. 142-143)

"Over objection the Court allowed the evidence noting perceptively that 'you might be in good shape in a Criminal Court, but this is not a Criminal Court, Mr. Taylor.' (Tr. 143) The defendants were entitled to Constitutional protection (both State and Federal) from unreasonable search and seizure which was denied them by reason of the Court's assumption of criminal jurisdiction.

"4. The Court erred in permitting evidence, over the objection of defense counsel, of some type of bullet or missile which the complainant refused to offer into evidence. Sheriff Kirkpatrick was allowed to testify as to comparisons of the bullet found near the Duckett home and another bullet allegedly handed him by the sheriff of McMinn County. (Tr. 134, 135)

" 'THE COURT: Do you have the gun with you?

" 'THE WITNESS: No. sir. It's locked up at Madisonville.

" 'THE COURT: Madisonville?

" 'THE WITNESS: Yes, sir.

" 'MR. TAYLOR: That's all. Come down.

" 'THE COURT: Are you offering this gun and ammunition in evidence?

" 'MR. CARTER: I would like to but he didn't bring it.

" 'THE COURT: Let it be treated as filed and withdrawn.' (Tr. 137)

The defendants were deprived of the right to cross-examine in accordance with the statutes and Constitu-

tion of the State of Tennessee and the Constitution of the United States."

Appellant's first assignment of error and major contention is that the trial court erred in denying appellants a trial by jury. It is asserted that this denial violates the right to trial by jury contained in T.C.A. §40-2504, Article 1, Section 6 of the Constitution of the State of Tennessee, and Amendment 7 of the Constitution of the United States. This assignment of error is wholly without merit. This Court, in *Pass* v. *State* (1944) 181 Tenn. 613, 184 S.W.2d 1, has answered this question in clear and unmistakable terms, both with respect to the statutory right to jury trial in Chancery Court provided in T.C.A. §40-2504 and right to jury trial under the Tennessee Constitution. It would serve no purpose but that of supererogation to attempt to restate the law of Tennessee in this regard, when it has been so ably and lucidly stated in the case just cited.

Likewise, that opinion takes into full account the 7th Amendment to the Constitution of the United States. It is completely clear that the result we reach in this case would be the same under Federal jurisdiction. The United States Supreme Court decisions cited and quoted from in *Pass* v. *State,* supra, have lately been brought down to date in the opinion of that Court in *Cheff* v. *Schnackenberg* (1966) 384 U.S. 373, 16 L.Ed.2d 629, 86 S.Ct. 1523. It inevitably follows, upon consideration of these decisions, that the first assignment of error must be overruled.

Appellants' assignment of error 2 urges that the Chancery Court was without jurisdiction to issue the injunction found to be violated. The assignment is based upon the fallacy that such injunction sought to and did enjoin violation of the criminal laws of the State of Tennessee, as such. However, this is clearly not the case here. This injunction was issued (1) to protect the property and personal rights of the Taylor Implement Manufacturing Company, Inc. and its non-striking employees; and (2) to maintain an atmos-

phere of reasonable tranquility in which a labor dispute might be resolved. See 28 Am. Jur. 655 (Injunctions-Sec. 157). It is also the law of this State that even if the injunction were improperly issued, as contended by the appellants, they are required to obey it as long as it continues in force; and would be guilty of contempt of court if they failed to obey it. See *Nashville Corp.* v. *United Steelworkers of America, CIO* (1948) 187 Tenn.444, 215 S.W.2d 818.

Appellants' assignment of error 3 argues that the trial court erred in admitting evidence relating to an air rifle found in appellant McKinney's automobile. It is true that such weapon was found by search of the automobile, without search warrant. The evidence contained in this record shows, however, that the search of the car was made after the appellant McKinney had been arrested for reckless driving. No question is made but that this was a lawful arrest. The question then is whether the search was reasonable or otherwise. The gun was found, according to the only evidence contained in the record, under the front seat of the automobile. It is the law of this State that, within reasonable limits, the police may search pursuant to a lawful arrest the person and property of the person arrested for evidence of the crime for which he is arrested, and for weapons which might be utilized for resistance or escape. It is the opinion of this Court that the search here conducted was within those reasonable limits. If so, evidence of other unlawful conduct produced pursuant to a lawful search of this type is admissible in prosecution based upon such other unlawful conduct. See *Church* v. *State* (1960) 206 Tenn. 336, 333 S.W.2d 799, and *Elliott* v. *State* (1938), 173 Tenn. 203, 116 S.W.2d 1009.

Appellants' fourth assignment of error is that the trial court erred in allowing a Sheriff Kirkpatrick to testify as to comparisons he made of a projectile found near the Duckett home and another projectile allegely given him by

the Sheriff of McMinn County. The latter was taken from the car of the appellant McKinney. The main basis of objection to this testimony seems to be that these projectiles were not introduced into evidence. No authority is cited to support appellants' contention that for the court to allow Sheriff Kirkpatrick's testimony, it was necessary to introduce the projectiles into evidence. Further, the appellants fail to point out how or if they were prejudiced by the failure to enter the projectiles into evidence. This Court is of the opinion that Sheriff Kirkpatrick's testimony was admissible. Even if his testimony was not admissible, it would constitute, at most, harmless error. Here, there is no jury to be misled if, in fact, misleading testimony was given, but rather this case was tried by a Chancellor, with knowledge of the law and the rules of evidence.

It is the opinion of this Court that, even without this evidence, sufficient evidence is contained in the record to fully justify the Chancellor's finding. Thus, an error in admitting evidence, if such were present, would not indicate reversal. See *Bowdon* v. *Bowdon* (1955) 198 Tenn. 143, 278 S.W.2d 670.

The judgment of the trial court is affirmed, with costs of this appeal assessed against the appellants.

LARRY CRESON,
Justice

Burnett, C.J.,
Dyer and Chattin, JJ.,
Harbison, Sp. J., concur

OPINION ON PETITION TO REHEAR

We have been presented with a petition to rehear. The petition urges that this Court overlooked some of petitioner's contentions in arriving at its earlier opinion. It is sufficient to say that all of these contentions were considered by the Court in arriving at its original opinion. This Court is under no obligation to specifically answer every question made, simply because the same is made, regardless of how obviously devoid of merit.

The petition to rehear filed in this case is simply a reargument of those issues and contentions considered by this Court in preparing its original opinion. All of these contentions and the authorities cited in support of them were given full consideration by the Court and this Court feels no necessity to again review these questions.

No new argument is made, no new authority is adduced, and no material fact is pointed out as overlooked.

The petition to rehear is denied.

LARRY CRESON,
Justice

Burnett, C.J.
Dyer and Chattin, JJ.,
Harbison, Sp. J., concur